

REMARKS

This Amendment is made in response to the Final Action mailed April 29, 2010. Claims 1, 5, 8-10 and 12-19 are pending in this application. Entry of this Response and reconsideration and withdrawal of the objections to and rejections of this application are respectfully requested in view of the above claims, and further, in view of the following remarks.

Preliminarily, Applicant notes that the Information Disclosure Statement filed January 24, 2010, failed to comply with 37 C.F.R. §§1.98(a)(2) - (a)(3). Applicant submits herewith a Supplemental IDS that remedies the defects pointed out by the Examiner. In addition, English language Abstracts and/or equivalents to the foreign language documents previously submitted, are included with this Response. Applicant urges that the instant IDS is compliant with the Rules.

Claim 1 is directed to an aerosol dentifrice formulation comprising water, a particulate abrasive and a propellant, characterised in that the propellant comprises a non-hydrocarbon propellant being 3-2wt% of the formulation and a hydrocarbon propellant being 2-3 wt% of the formulation, wherein the non-hydrocarbon propellant consists of dimethylether and the hydrocarbon propellant consists of n-butane. Claim 19 is directed to a formulation of claim 1 wherein the pH ranges between 6 and 10.

Claims 1-5, 8-10 and 12-19 have been rejected under 35 U.S.C. §103(a), as being unpatentable over International Patent Publication No. WO 01/62211 ("the '211 publication") in view of U.S. Patent 5,824,289, granted October 20, 1998, to Stoltz ("Stoltz"). Reconsideration and withdrawal of the rejection are respectfully requested.

The '211 publication relates to a post-foaming composition, i.e., a composition that is dispensed as a ribbon of paste or gel, and thereafter slowly swells up due to the release of the propellant. This type of self expanding paste is a post-foaming composition and not an "aerosol dentifrice" as in the present invention. In fact, the Action admits on page 4, that the '211 publication does not "teach utilizing [a] propellant mixture such as DME and n-butane". There is no suggestion that propellants other than hydrocarbon propellants be used in the formulations, thus providing no incentive to use alternate propellant systems or mixtures of different classes of propellants. Given this admission as well as the other distinctions, Applicant is unsure why the '211 publication is even a reference, let alone a primary reference.

Regarding Stoltz, it relates to an oil-in-water emulsion, again, a very different formulation that that claimed herein, dispensed with an aerosol propellant, defined as including isobutene, propane, or mixtures thereof (see, col.2, lines 34-36; and col. 6, lines

64-66). The problem addressed by Stoltz is not one of alternative propellant systems but of rapidly dissipating foams and ensuring there is stability of the formulation within the oral cavity, not on a toothbrush as in the present invention. The problem addressed by Stoltz is not remedied by using a dual propellant system, but rather, by using an oil-in-water (hydrophobic) based emulsion. Stoltz does no more than suggest mixing aerosol propellants that "can produce sufficiently high vapor pressure". It does not disclose DME in combination with a hydrocarbon propellant as a suitable system. Importantly, DME is not exemplified as a propellant in combination with another propellant, let alone a hydrocarbon propellant. In the examples, the only combination of propellants that is "taught" is a combination of isobutane (A-31) and isobutane/propane (A-70), both being mixtures of hydrocarbon propellants. Stoltz does not teach or suggest a specific combination of DME and n-butane propellants. Therefore, a skilled person interested in post-foaming compositions would not refer to Stoltz for guidance on suitable propellant systems.

The Action uses Stoltz as a secondary reference because it sets out a long list of suitable propellants that happens to mention DME and other hydrocarbon propellants and is then suggesting that it would be obvious to combine this with '211 publication. Applicant disagrees as there is nothing in either the '211 publication or Stoltz, alone, or in any fair combination, to motivate the skilled person to look to the other document, let alone combine their teaching to arrive at the instant invention. Furthermore, to combine the vast range of possible propellants from Stoltz and then include these in the post-foaming formulation of the '211 publication would not result in the present invention. One would not look at a post-foaming formulation and then an acidic oil-in-water aerosol formulation in order to solve a stability issue with high water content formulation.

Therefore, the Action fails to establish a *prima facie* case of obviousness. Reconsideration and withdrawal of the rejection under Section 103(a) are respectfully requested.

Claims 1-5, 8-10 and 12-19 have been rejected under 35 U.S.C. §103(a), as being unpatentable over the '211 publication in view of Stoltz, and further, in view of U.S. publication 2004/0197295 ("the '295 publication"). Reconsideration and withdrawal of the rejection are respectfully requested.

The '295 publication, which appears to relate to a foamable formulation, it is not an oral care composition or one that exemplifies a propellant system of a hydrocarbon propellant and a non-hydrocarbon propellant, specifically DME and n-butane. The examples only show dual propellants being hydrocarbon propellants. Similar to Stoltz, the '295 publication does not teach hydrocarbon propellant and a non-hydrocarbon propellant

systems. Our data on page 5 clearly shows that you do not achieve the present invention with either a hydrocarbon propellant or a non-hydrocarbon propellant alone.

In view of the foregoing, favorable reconsideration of claims 1, 5, 8-10 and 12-19 and allowance of this application with claims 1, 5, 8-10 and 12-19 are earnestly solicited.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Nora Stein-Fernandez".

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